

1 AN ACT in relation to highways.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Illinois Highway Code is amended by
5 changing Section 9-113 as follows:

6 (605 ILCS 5/9-113) (from Ch. 121, par. 9-113)

7 Sec. 9-113. (a) No ditches, drains, track, rails, poles,
8 wires, pipe line or other equipment of any public utility
9 company, municipal corporation or other public or private
10 corporation, association or person shall be located, placed
11 or constructed upon, under or along any highway, or upon any
12 township or district road, without first obtaining the
13 written consent of the appropriate highway authority as
14 hereinafter provided for in this Section.

15 (b) The State highway authority is authorized to
16 promulgate reasonable and necessary rules, regulations and
17 specifications for State highways for the administration of
18 this Section.

19 (c) In the case of non-toll federal-aid fully
20 access-controlled State highways, the State highway authority
21 shall not grant consent to the location, placement or
22 construction of ditches, drains, track, rails, poles, wires,
23 pipe line or other equipment upon, under or along any such
24 non-toll federal-aid fully access-controlled State highway,
25 which:

26 (1) would require cutting the pavement structure portion
27 of such highway for installation or, except in the event of
28 an emergency, would require the use of any part of such
29 highway right-of-way for purposes of maintenance or repair.
30 Where, however, the State highway authority determines prior
31 to installation that there is no other access available for

1 maintenance or repair purposes, use by the entity of such
2 highway right-of-way shall be permitted for such purposes in
3 strict accordance with the rules, regulations and
4 specifications of the State highway authority, provided
5 however, that except in the case of access to bridge
6 structures, in no such case shall an entity be permitted
7 access from the through-travel lanes, shoulders or ramps of
8 the non-toll federal-aid fully access-controlled State
9 highway to maintain or repair its accommodation; or

10 (2) would in the judgment of the State highway
11 authority, endanger or impair any such ditches, drains,
12 track, rails, poles, wires, pipe lines or other equipment
13 already in place; or

14 (3) would, if installed longitudinally within the access
15 control lines of such highway, be above ground after
16 installation except that the State highway authority may
17 consent to any above ground installation upon, under or along
18 any bridge, interchange or grade separation within the
19 right-of-way which installation is otherwise in compliance
20 with this Section and any rules, regulations or
21 specifications issued hereunder; or

22 (4) would be inconsistent with Federal law or with
23 rules, regulations or directives of appropriate Federal
24 agencies.

25 (d) In the case of accommodations upon, under or along
26 non-toll federal-aid fully access-controlled State highways
27 the State highway authority may charge an entity reasonable
28 compensation for the right of that entity to longitudinally
29 locate, place or construct ditches, drains, track, rails,
30 poles, wires, pipe line or other equipment upon, under or
31 along such highway. Such compensation may include in-kind
32 compensation.

33 Where the entity applying for use of a non-toll
34 federal-aid fully access-controlled State highway

1 right-of-way is a public utility company, municipal
2 corporation or other public or private corporation,
3 association or person, such compensation shall be based upon
4 but shall not exceed a reasonable estimate by the State
5 highway authority of the fair market value of an easement or
6 leasehold for such use of the highway right-of-way. Where
7 the State highway authority determines that the applied-for
8 use of such highway right-of-way is for private land uses by
9 an individual and not for commercial purposes, the State
10 highway authority may charge a lesser fee than would be
11 charged a public utility company, municipal corporation or
12 other public or private corporation or association as
13 compensation for the use of the non-toll federal-aid fully
14 access-controlled State highway right-of-way. In no case
15 shall the written consent of the State highway authority give
16 or be construed to give any entity any easement, leasehold or
17 other property interest of any kind in, upon, under, above or
18 along the non-toll federal-aid fully access-controlled State
19 highway right-of-way.

20 Where the compensation from any entity is in whole or in
21 part a fee, such fee may be reasonably set, at the election
22 of the State highway authority, in the form of a single lump
23 sum payment or a schedule of payments. All such fees charged
24 as compensation may be reviewed and adjusted upward by the
25 State highway authority once every 5 years provided that any
26 such adjustment shall be based on changes in the fair market
27 value of an easement or leasehold for such use of the
28 non-toll federal-aid fully access-controlled State highway
29 right-of-way. All such fees received as compensation by the
30 State highway authority shall be deposited in the Road Fund.

31 (e) Any entity applying for consent shall submit such
32 information in such form and detail to the appropriate
33 highway authority as to allow the authority to evaluate the
34 entity's application. In the case of accommodations upon,

1 under or along non-toll federal-aid fully access-controlled
2 State highways the entity applying for such consent shall
3 reimburse the State highway authority for all of the
4 authority's reasonable expenses in evaluating that entity's
5 application, including but not limited to engineering and
6 legal fees.

7 (f) Except for sewer and water facilities, any ditches,
8 drains, track, rails, poles, wires, pipe line or other
9 equipment located, placed or constructed upon, under or along
10 a State highway with the consent of the State highway
11 authority under this Section shall, upon written notice by
12 the State, highway authority be subject to removal,
13 relocation or modification at no expense to the State highway
14 authority when and as deemed necessary by the State highway
15 authority for highway or highway safety purposes. If, within
16 60 days after receipt of such written notice, arrangements
17 are not made satisfactory to the State highway authority for
18 such removal, relocation or modification, the State highway
19 authority may remove, relocate or modify such ditches,
20 drains, track, rails, poles, wires, pipe line or other
21 equipment and bill the owner thereof for the total cost of
22 such removal, relocation or modification. The State highway
23 authority shall determine the terms of payment of those costs
24 provided that all costs billed by the State highway authority
25 shall not be made payable over more than a 5 year period from
26 the date of billing. This paragraph shall not be construed
27 to prohibit the State highway authority from paying any part
28 of the cost of removal, relocation or modification where such
29 payment is otherwise provided for by State or federal statute
30 or regulation. The Department of Transportation shall provide
31 for the relocation of all public and private water and sewer
32 facilities within the costs of the construction or highway
33 safety project.

34 (g) It shall be the sole responsibility of the entity,

1 without expense to the State highway authority, to maintain
2 and repair its ditches, drains, track, rails, poles, wires,
3 pipe line or other equipment after it is located, placed or
4 constructed upon, under or along any State highway and in no
5 case shall the State highway authority thereafter be liable
6 or responsible to the entity for any damages or liability of
7 any kind whatsoever incurred by the entity or to the entity's
8 ditches, drains, track, rails, poles, wires, pipe line or
9 other equipment.

10 (h) Upon receipt of an application therefor, consent to
11 so use a highway may be granted subject to such terms and
12 conditions not inconsistent with this Code as the highway
13 authority deems for the best interest of the public. The
14 petitioner shall pay to the owners of property abutting upon
15 the affected highways established as though by common law
16 plat all damages the owners may sustain by reason of such use
17 of the highway, such damages to be ascertained and paid in
18 the manner provided by law for the exercise of the right of
19 eminent domain.

20 (i) Such consent shall be granted by the Department in
21 the case of a State highway; by the county board or its
22 designated county superintendent of highways in the case of a
23 county highway; by either the highway commissioner or the
24 county superintendent of highways in the case of a township
25 or district road, provided that if consent is granted by the
26 highway commissioner, the petition shall be filed with the
27 commissioner at least 30 days prior to the proposed date of
28 the beginning of construction, and that if written consent is
29 not given by the commissioner within 30 days after receipt
30 of the petition, the applicant may make written application
31 to the county superintendent of highways for consent to the
32 construction. This Section does not vitiate, extend or
33 otherwise affect any consent granted in accordance with law
34 prior to the effective date of this Code to so use any

1 highway.

2 (j) Nothing in this Section shall limit the right of a
3 highway authority to permit the location, placement or
4 construction or any ditches, drains, track, rails, poles,
5 wires, pipe line or other equipment upon, under or along any
6 highway or road as a part of its highway or road facilities
7 or which the highway authority determines is necessary to
8 service facilities required for operating the highway or
9 road, including rest areas and weigh stations.

10 (k) Paragraphs (c) and (d) of this Section shall not
11 apply to any accommodation located, placed or constructed
12 with the consent of the State highway authority upon, under
13 or along any non-toll federal-aid fully access-controlled
14 State highway prior to July 1, 1984, provided that
15 accommodation was otherwise in compliance with the rules,
16 regulations and specifications of the State highway
17 authority.

18 (l) The consent to be granted pursuant to this Section
19 by the appropriate highway authority shall be effective only
20 to the extent of the property interest of the State or
21 government unit served by that highway authority. Such
22 consent shall not be binding on any owner of the fee over or
23 under which the highway or road is located and shall not
24 otherwise relieve the entity granted that consent from
25 obtaining by purchase, condemnation or otherwise the
26 necessary approval of any owner of the fee over or under
27 which the highway or road is located. This paragraph shall
28 not be construed as a limitation on the use for highway or
29 road purposes of the land or other property interests
30 acquired by the public for highway or road purposes,
31 including the space under or above such right-of-way.

32 (Source: P.A. 85-540.)